

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HONG F. ZHENG,

Plaintiff,

-against-

MEMORANDUM AND ORDER

20-cv-517 (EK)

UNITED STATES CITIZENSHIP AND IMMIGRATION
SERVICES, et al.

Defendants.

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ERIC KOMITEE, United States District Judge:

Plaintiff Hong F. Zheng commenced this action in January 2020, seeking review of the United States Citizenship and Immigration Services' denial of his application for naturalization. Complaint at ¶ 1, ECF No. 1.

To comply with Rule 4(m) of the Federal Rules of Civil Procedure (which sets forth the time for service of process in federal court), Plaintiff needed to serve Defendants within ninety days of filing his complaint. See Fed. R. Civ. P. 4(m) ("If a defendant is not served within 90 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time.").

This case was reassigned to me in July 2021, at which time the docket still showed no indication that Plaintiff had

effected service. Shortly after the reassignment, this Court issued an order to show cause why the case should not be dismissed for failure to prosecute. See Order of July 12, 2021. Plaintiff responded with a letter arguing the merits of the case, rather than addressing the failure to prosecute. See Letter at 1, ECF No. 3.

In an order on August 5, 2021, I again directed Plaintiff to show cause why the case should not be dismissed. Plaintiff then advised the Court that he had effectuated service on Defendants on February 28, 2020; but he failed to provide any proof that service was made consistent with Rule 4(i)(2) of the Federal Rules of Civil Procedure, which sets out the ways in which plaintiffs may serve federal agencies and United States officials or employees sued in their official capacities. See Letter, ECF No. 4; *see also* Order of October 15, 2021. Plaintiff then failed to comply with an additional order of this Court to provide proof of service by October 22, 2021. See Order of October 25, 2021.

Finally, on October 26, 2021, Plaintiff filed an affidavit, attesting to his efforts to serve the Defendants. See ECF No. 5. That affidavit, however, states only that Plaintiff served USCIS and the Department of Homeland Security via mail on February 28, 2020. See *id.* at 2. Federal Rule of Civil Procedure 4(i)(2) requires that a plaintiff suing a

federal agency or an officer or employee in an official capacity “must serve the United States and also send a copy of the summons of the complaint by registered or certified mail to the agency, corporation, officer, or employee.” For one shortcoming, Plaintiff did not serve the United States, rendering service of USCIS and the Department of Homeland Security incomplete.¹ For another, the affidavit described no effort at all to serve the other Defendants (individuals in their official capacities).

Plaintiff was given an additional opportunity to show cause why the case should not be dismissed for failure to properly serve Defendants. See Order of November 23, 2021. Plaintiff has not replied to this order to date. Nearly two years after the opening of this case and following several orders to show cause, Plaintiff has not established proper service.

¹ To serve the United States, a plaintiff must send a copy of the summons and complaint to the United States Attorney for the district where the action is brought (or the civil-process clerk at that office) and the Attorney General of the United States. See Fed. R. Civ. P. 4(i)(1). Plaintiff did not comply with this rule.

Therefore, this action must be dismissed without prejudice for failure to serve in the time required by Rule 4(m) of the Federal Rules of Civil Procedure. The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: Brooklyn, New York
January 24, 2022